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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,894	02/06/2004	David J. Edmondson	1643.104 (PA000050)	8329
66313	7590	12/09/2010		
DOCKET CLERK P.O. BOX 12608 DALLAS, TX 75225				
EXAMINER NELSON, FREDA ANN				
ART UNIT		PAPER NUMBER		
3628				
NOTIFICATION DATE		DELIVERY MODE		
12/09/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket.clerk@kelly-krause.com

Office Action Summary

Application No.

10/773,894

Applicant(s)

EDMONDSON ET AL.

Examiner

FREDA A. NELSON

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 4th and 23rd of 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-15 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-15 and 18-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB006)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: _____

DETAILED ACTION

The amendments received on 04 November 2010 and 23 November 2010 is acknowledged and entered. Claims 1 and 15 have been amended. Claims 2-4 and 16-17 have been canceled. No claims have been added. Claims 1, 5-15 and 18-24 are currently pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04 November 2010 has been entered.

Response to Amendments and Arguments

2. Applicant's arguments filed November 4th and 23rd of 2010 have been fully considered but they are not persuasive.

3. Applicant's amendments filed November 4th and 23rd of 2010 with respect to the rejection of claims 1, 5-14, and 21-22 under 35 U.S.C. 101, have been fully considered and are not persuasive because the Applicant is claiming an apparatus however, the body of the claims recite only logic or software (i.e., engine, single software application,

interface) for a computer and not the structural make up of the computer (i.e., processor, computer, cpu). Thus, the rejection under 35 U.S. C. 101 is upheld.

4. The Applicant argues that none of the disclosed categories in Ballou pertain to, or are suggestive of, a category group into which a content creator is categorized depending upon a sales history of other content of the content creator nor of initially pricing content based upon the content creator being categorized into a content group defined in this manner.

The Examiner asserts that Seki et al. discloses when the ranking information is set as the dependency element in the initial setup table 21, a rank (the retail sales count rank or popularity rank) corresponding to the dependency element is stored in the ranking table 26. In this embodiment, a site for obtaining the aggregate for the ranking may be provided for the product retail sales management server 10 that provides a product retail service, and unique ranking may be determined. Or, the information for ranking performed by another web site is obtained, depending on a product, and may be stored in the ranking table 26. When the product is music or video, the information is obtained from the site established to provide rankings for the popularity of music pieces or films, so that the price of the product can be set based on more general ranking information ([0076]).

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. **Claims 1 and 5-14** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

An invention, which is eligible or patenting under 35 U.S.C. 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result.

6. **As per claims 1 and 5-14**, the Applicant is claiming an apparatus however, the body of the claims recite only logic or software (i.e., engine, single software application, interface) for a computer and not the structural make up of the computer (i.e., processor, computer, cpu). Thus, the claims are directed to functional descriptive material that is not functionally or structurally interrelated to any medium. Data structures not claimed as embodied on statutory computer-readable media (i.e., storage media, and excluding non-statutory media such as carrier waves) are descriptive material per se and therefore not patentable subject matter under § 101 as they are neither a process, a machine, a manufacture, nor a composition of matter. MPEP § 2106 IV.(g)(1)(a).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1, 5-14, and 21-24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Eglen et al. (US PG Pub. 2003/0023505), in view of Ballou, Jr. et al. (US PG Pub. 2002/0112235), in further view of Seki et al. (US PG Pub. 2002/0004751).

As per claim 1, Eglen et al. disclose an apparatus for associating a price indicia with each of the first content tile and at least a second content file stored at a content database of a content distribution facility, each of the first and at least second content files authored by content creators, said apparatus comprising:

a content creator database configured to form a listing formed of listings that identify content creators together with historical indicia associated with respective content creators, said historical indicia comprising a categorized value (paragraphs [0060],[0063],[0065])

an initial price indicia associator adapted to receive content indicia associated with each of the first and at least second content files stored at the content creator database and adapted to access said content creator database, said initial price indicia associator configured to initially price each of the first and at least second content files with initial price indicia (paragraphs, [0058]-[0060],[0063]-[0064] popular music,[0081],[0122]-[0123],[0136]; see FIG. 3) {the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz . . .), description, comments, *pricing information*, *demand information*, and/or length/size of the song along with other information relating to the song};

a price indicia adjuster adapted to receive indications of the initial price indicia that said initial price indicia associator associates with each of the first and at least second content files and to receive indications of demand for each of the first and at least second content files, said price indicia adjuster configured to adjust the initial price indicia responsive to the demand therefore, the demand data based, at least in part, upon indications of inquiries of availability, and for forming adjusted price indicia associated with each of the first and at least second content files (abstract; paragraphs [0058],[0073],[0099], [0122]).

Eglen et al. does not explicitly disclose the categorized value comprising identifying a category group into which a respective content creator is categorized the category group into which the content creator is categorized dependent upon a sales history depending upon prior sales histories of other content files of the respective content creators indicia of historical sales of other content files authored by the respective content creator indexed together therewith; and the initial price indicia being based on the categorized value identifying the category group into which the respective content creators of each of said first and at least second content files are categorized.

Ballou, Jr. et al. discloses movies may be different prices depending upon which pricing category the movie is coded for ([0049]). Ballou, Jr. et al. further disclose typically, each movie disk contains a data table that indicates the pricing category for each movie on the disk. The category for each movie is established by the content provider prior to production of the disk. Categories may range from "recent blockbuster" to "old one-star". In some cases a movie may be listed in several categories with start

dates for each category. *Pricing categories may have generic names, but may also merely be pricing structures that different movies are listed under* ([0056]-[0056]; FIG. 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Eglén et al. to include the ability to price movies based on categories as taught by Ballou, Jr. et al. in order to maximize profits by pricing content based on demand of content.

Eglén et al., in view of Ballou, Jr. et al. does not explicitly disclose the initial price indicia to be dependent upon the sales history of the other content files authorized by each respective content creator .

Seki et al. discloses when the ranking information is set as the dependency element in the initial setup table 21, a rank (the retail sales count rank or popularity rank) corresponding to the dependency element is stored in the ranking table 26; in this embodiment, a site for obtaining the aggregate for the ranking may be provided for the product retail sales management server 10 that provides a product retail service, and unique ranking may be determined. Or, the information for ranking performed by another web site is obtained, depending on a product, and may be stored in the ranking table 26. When the product is music or video, the information is obtained from the site established to provide rankings for the popularity of music pieces or films, so that the price of the product can be set based on more general ranking information ([0076]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Eglén et al., in view of Ballou et al. to include the ability to set initial prices based on the aggregate for popularity or

ranking of the product as taught by Seki et al. in order to optimize profits by setting prices to get optimal revenue based on the demand of the products.

As per claim 5, Eglen et al. discloses the a apparatus of claim 1 wherein the initial price indicia with which said initial price indicia associator associates with the first and at least second content files is further directly related, at least in a stepwise manner, with the historical demand (paragraphs [0064],[0123]) {pricing algorithm parameters field 352 can store information such as the historical pricing and quantity ordered information for the item; and alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112}.

As per claim 6, Eglen et al. disclose the apparatus of claim 1 wherein the historical indicia indexed together with the content creator at the author index formed at said content creator database categorizes the historical demand into a first historical demand level at least a second historical demand level (paragraphs [0064],[0123]) {pricing algorithm parameters field 352 can store information such as the historical pricing and quantity ordered information for the item; and alternatively or additionally, the dynamic pricing system 102 in this and other embodiments can automatically set the initial price based on default prices and/or historical prices for similar content stored in memory 112}.

As per claim 7, Eglen et al. discloses the apparatus of claim 1 wherein the first content file and the at least the second content file stored at the content database is at least selectably available for delivery to content consumers and wherein the indications of the demand to which said price indicia adjuster is adapted to receive further comprise indications related to inquiries relating to individual ones of the first and at least second content files (paragraphs [0052],[0058]).

As per claim 8, Eglen et al. disclose the apparatus of claim 7 wherein copies of the first and at least second content files are at least selectably available for purchase by the content consumers and wherein the inquiries selecting to the individual ones of the first and at least second content files comprise inquiries relating to purchase of copies of the individual ones of the first and at least second content files (paragraphs [0052],[0058]).

As per claim 9, Eglen et al. disclose the apparatus of claim 8 wherein the inquiries relating to the purchase of the copies of the individual ones of the first and at least second content files comprise indications of purchase requests made by the content consumers (paragraph [0122])the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for

instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

As per claim 10, Eglen et al. disclose the apparatus of claim 8 wherein the inquiries relating to the purchase of the copies of the individual ones of the first and at least second content files comprise indications of purchase completions made by the content consumers (paragraph [0122]){the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

As per claim 11, Eglen et al. disclose the apparatus of claim 1 wherein said price indicia adjuster is adapted to interactively adjust the adjusted price indicia associated with each of the first and at least second content files (paragraph [0122]){the

dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

As per claim 12, Eglen et al. disclose the apparatus of claim 1 wherein the indications of demand to which said price indicia adjuster is adapted to receive are applied to said price indicia adjuster at least at successive intervals, dynamically to receive the indications of the demand, and wherein said price indicia adjuster is adapted to further successively form the adjusted price indicia responsive to the indications of the demand received at the at least the successive intervals (paragraph [0122])the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the

time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}.

As per claim 13, Eglen et al. disclose the apparatus of claim 12 wherein the adjusted price indicia formed by said price indicia adjuster formed at least at the successive intervals is adapted to incrementally change prior-formed values of the adjusted price indicia (paragraph [0122]) {the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}..

As per claim 14, Eglen et al. disclose the apparatus of claim 1 further comprising a revenue allocator adapted to receive the indications of demand, said revenue allocator for allocating revenues associated with the first and at least second content files (paragraph 0158; FIG. 30E and FIG. 31) {the owner of the dynamic pricing system 102 generates revenue by receiving a portion of the revenue generated by the sale of items on the dynamic pricing system 102}.

As per claim 15, Eglen et al. discloses a computer program product comprising non-transitory computer readable storage medium, said computer program for distributing content stored at a content database, the content formed of a first content file and at least a second content file, the first and at least second content files authored by content creators, said method for associating a price indicia with each of the first and at least second content files stored at the content database, said computer program product comprising:

computer readable program code embodied at the non-transitory computer readable storage medium for associating historical indicia with the content creators, the historical indicia including a categorized value, the categorized value identifying a category group into which a respective content creator is categorized (paragraphs [0052],[0060],[0063]-[0065]);

computer readable program code embodied at the non-transitory computer readable storage medium for initially pricing each of the first and at least second content files with initial price indicia of the respective content creators of each of the first and at least second content files (paragraphs, [0059]-[0060],[0063]-[0064],[0081],[0122]-[0123],[0136]; see FIG. 3); and

computer readable program code embodied at the non-transitory computer readable storage medium for adjusting the initial price indicia with which the first and at least second content files are initially priced during said operation of initially pricing responsive to indications of demand for each of the first and at least second content

files, the demand based, at least in part, upon indications of inquiries of availability of the first and second content files, respectively, to form adjusted price indicia associated with each of the first and at least second content files (abstract; paragraphs [0052],[0058], [0099],[0122]).

Eglen et al. des not explicitly disclose the categorized value comprising identifying a category group into which a respective content creator is categorized the category group into which the content creator is categorized dependent upon a sales history depending upon prior sales histories of other content files of the respective content creators indicia of historical sales of other content files authored by the respective content creator indexed together therewith; and the initial price indicia being based on the categorized value identifying the category group into which the respective content creators of each of said first and at least second content files are categorized.

Ballou, Jr. et al. discloses movies may be different prices depending upon which pricing category the movie is coded for ([0049]). Ballou, Jr. et al. further disclose typically, each movie disk contains a data table that indicates the pricing category for each movie on the disk. The category for each movie is established by the content provider prior to production of the disk. Categories may range from "recent blockbuster" to "old one-star". In some cases a movie may be listed in several categories with start dates for each category. Pricing categories may have generic names, but may also merely be pricing structures that different movies are listed under ([0056]-[0056]; FIG. 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Eglen et al. to include the ability to price movies based on categories as taught by Ballou, Jr. et al. in order to maximize profits by pricing content based on demand of content.

Eglen et al., in view of Ballou, Jr. et al. does not explicitly disclose the initial price indicia to be dependent upon the sales history of the other content files authorized by each respective content creator .

Seki et al. discloses when the ranking information is set as the dependency element in the initial setup table 21, a rank (the retail sales count rank or popularity rank) corresponding to the dependency element is stored in the ranking table 26; in this embodiment, a site for obtaining the aggregate for the ranking may be provided for the product retail sales management server 10 that provides a product retail service, and unique ranking may be determined. Or, the information for ranking performed by another web site is obtained, depending on a product, and may be stored in the ranking table 26. When the product is music or video, the information is obtained from the site established to provide rankings for the popularity of music pieces or films, so that the price of the product can be set based on more general ranking information ([0076]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Eglen et al., in view of Ballou et al. to include the ability to set initial prices based on the aggregate for popularity or ranking of the product as taught by Seki et al. in order to optimize profits by setting prices to get optimal revenue based on the demand of the products.

As per claim 18, Eglen et al. disclose computer program product of claim 15 wherein copies of the first content file and the at least the second content file each are at least selectably available for delivery to content consumers and wherein the indications of the demand for each of the first and at least second content files comprise indications of requests made by the content consumers comprise indications related to at least requests for copies of selected ones of the first and at least second content files (paragraphs [0052],[0058]).

As per claim 19, Eglen et al. disclose the computer program product of claim 15 wherein said operation of adjusting the initial price indicia further comprises adjusting the adjusted price indicia (paragraph [0060]) {the music databases 230 can store the file name of a song, the location of the file on the home music server 220, song title, artist, author, producer, distributor (label), album name, album picture, picture of the artist, musical category (i.e. rock, jazz . . .), description, comments, pricing information, demand information, and/or length/size of the song along with other information relating to the song}.

As per claim 20, Eglen et al. disclose the computer program product of claim 15 wherein adjustments to the adjusted price indicia during said operation of adjusting are performed incrementally (paragraph [0122]){the dynamic price modifier increases the price of an item when demand for that item increases and reduces the price of an item when the demand for the item decreases and in one form, the dynamic pricing modifier

is based on the differences between the quantity ordered at specific intervals wherein, for instance, these intervals can be by second, by minute, hourly, daily, monthly, or yearly; and in another form, the dynamic pricing modifier is based on the time between successive purchases; for example, if the time delay between successive purchases decreases, the dynamic pricing system 102 can infer that demand is increasing and thus increase the price for the item}..

As per claim 21, Eglen et al. discloses wherein the initial price indicia formed is adjusted based on the delivery mechanism by which content is delivered to a respective content consumer ([0050],[0162]).

As per claim 22, Eglen et al. disclose the apparatus of claim 1 wherein the initial price indicia formed is adjusted based on whether a respective content consumer is a commercial content consumer or a non-commercial content consumer (paragraphs [0099],[0133],[0155]).

As per claim 23, Eglen et al. disclose the computer program product of claim 15 wherein the operation of initially pricing further comprises initially pricing each of the first and at least second content files responsive also to the delivery mechanism by which content is delivered to a respective content consumer ([0050],[0162]).

1. **As per claim 24**, Eglen et al. disclose the computer program product of claim 15 wherein the operation of initially pricing further comprises initially pricing each of the first and at least second content files responsive to whether a respective content consumer is a commercial content consumer or a non- commercial content consumer (paragraphs [0099],[0133],[0155]).

Conclusion

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Hanks et al. (US PG Pub. 2006/0282335), which includes an increases in sales rank as a measure of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDA A. NELSON whose telephone number is (571)272-7076. The examiner can normally be reached on Monday-Friday, 10:00 am - 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JOHN W HAYES/

Supervisory Patent Examiner, Art Unit 3628